

Appl. No. 10/782,343
Amdt. dated July 26, 2005
Reply to Office action of April 28, 2005

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Amendments to the Drawings:

The attached three sheets of drawings include changes to Figs. 1, 19 and 21. These three sheets replace the first, eighth and ninth sheets of drawings filed June 10, 2004.

Attachment: Three Replacement Sheets

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REMARKS/ARGUMENTS

Claims 1-20 were initially filed in this application.

In this amendment, Claims 1, 6, 12 and 20 have been amended.

Claim 11 has been canceled.

Claims 2-5, 7-10 and 14-19 remain unchanged.

Applicant appreciates the Examiner's indication that Claims 13-19 are allowed. As set forth below, the amendments to the Claims are believed to place the remaining Claims in condition for allowance. In view of the amendments, as discussed below, reconsideration of the Application and Issuance of a Notice of Allowability are respectfully requested.

Amendments To The Specification

Initially, Applicant notes that the specification has been amended to correct for various typographical errors in paragraphs [0010] and [0037]. In paragraph [0032] reference character "U", which does not appear in the drawings, has been deleted.

Amendments To The Drawings

FIG. 1 has been corrected to add missing reference numeral 10. FIG. 19 has been corrected to complete the shield 14 in the drawing. FIG. 21 has been amended to show that the pin section 114 is threaded, as described in paragraph [0047] of the application and as is shown in FIGS. 12A and 12B. These amendments to the drawings do not add new matter to the application.

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Claim Rejections – 35 U.S.C. §112

The Examiner rejected Claims 1-13 under §112, noting specific language in Claims 1 and 6. Claims 1 and 6 have been amended to correct the errors noted by the Examiner. In addition, upon further review, Applicant's undersigned attorney noted a lack of antecedent basis for "pocket" in Claim 6. Claim 6 has been amended to correct this as well. The claims as amended are believed to comply with the requirements of §112. Withdrawal of the §112 rejection is respectfully requested.

Claim Rejections – 35 U.S.C. §102

The Examiner rejected Claims 1-13 under 35 U.S.C. §102(b) as being anticipated by Lepp et al. (Pat. No. 4857820).

Claim 1 of the present invention is directed to a grain bin auger sweep. As set forth in Claim 1 as amended, the grain bin sweep comprises an auger assembly, a tractor drive frame assembly; and a tractor drive. The auger assembly comprises a shield, an auger at least partially surrounded by the shield; and an auger driver which drives the auger. The tractor drive frame assembly is claimed to comprise a first frame portion and a second frame portion. The two frame portions are independent of each other, but connected together along adjacent members of the first and second frame portions. When connected together, the first and second frame portions define a tractor drive receiving area. The tractor drive is then received in this receiving area.

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As is also set forth in the claim, the auger assembly comprises a first connecting member mounted to a back of the shield. The sweep also includes a second connecting member on a forward end of one of the first and second frame members. This second connecting member is matable with the first connecting member to connect the tractor frame assembly to the back of the shield.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). MPEP §2131. The Lepp et al. patent does not teach or suggest several elements set forth in Claim 1. In particular, Lepp et al. do not teach or suggest (1) a two part frame assembly to which a tractor drive is mounted; (2) a tractor drive mounted to the two part frame assembly; (3) a first connecting member mounted to the back of the shield; or (4) a second connecting member mounted to a front of one of the two parts of the frame assembly and which is matable with the first connecting member. In view of the fact that Lepp et al. do not teach or suggest at least the noted elements, the Lepp et al. reference does not anticipate or make obvious Claim 1, and Claim 1 is believed to be allowable over Lepp et al. Claims 2-10 and 12-13 all depend from Claim 1 and are similarly believed to be allowable.

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The Examiner rejected Claim 20 under 35 U.S.C. §102(b) as being anticipated by Jiskoot, Pat. No. 5639200. Jiskoot is missing several elements, and hence, does not anticipate Claim 20.

Initially, the Examiner has asserted that reference number 12 corresponds to both the shield and a first part of the frame assembly. Hence, the Examiner is asserting that the Jiskoot shield comprises part of the frame assembly. Claim 20, as amended, provides that the tractor frame assembly is connectable to the shield. Because, under the Examiner's construction of Jiskoot, the shield is part of the tractor frame assembly, Jiskoot does not teach or suggest that the "tractor frame assembly" is connectable to the shield as now set forth in Claim 20. To hold otherwise would be to say that one part can be connected to itself.

In addition, Applicant respectfully asserts that Jiskoot does not disclose the first and second connecting members as set forth in Claim 20. In his rejection, the Examiner stated the Jiskoot discloses "a first connecting member on the auger assembly and a second connecting member on the frame assembly wherein the connecting members are matable together to connect the frame assembly to the auger assembly (figure 3)." However, other than merely referencing Fig. 3 of Jiskoot, the Examiner has not pointed out what structure of Jiskoot corresponds to the first or second connecting members of Claim 20. To make a *prima facie* case of anticipation, the Examiner is required to specifically point out the elements of the reference asserted to correspond to the claim. To make a general

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statement as the Examiner has done here that the reference shows the elements of a claim is insufficient to make a *prima facie* case of anticipation. See for example *Oakley Inc. v. Sunglass Hut Int'l*, 65 U.S.P.Q.2d 1321, 1328 (Fed. Cir. 2003) (conclusory statement regarding disclosure is insufficient to make a *prima facie* case of anticipation.)

Hence, in view of the fact the Jiskoot does not teach or suggest the noted elements, Jiskoot does not anticipate Claim 20; and Claim 20 is believed to be allowable over Jiskoot.

Conclusion

In view of the foregoing, Claims 1-12 and 13 and 20 are believed to be in condition for allowance along with the allowed claims 14-19. A Notice of Allowability with respect to these claims is thus respectfully requested.

Respectfully Submitted,

Dated: 7/26/05


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